

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

MOE KESHAVARZI, SBN 223759

E-Mail: mkeshavarzi@sheppardmullin.com

DAVID DWORSKY, SBN 272167

E-Mail: ddworsky@sheppardmullin.com

333 South Hope Street, 43rd Floor

Los Angeles, California 90071

Telephone: 213.620.1780

Facsimile: 213.620.1398

ERROL J. KING, JR.

PHELPS DUNBAR LLP

II City Plaza

400 Convention Street, Suite 1100

Baton Rouge, Louisiana 70802

Telephone: (225) 376-0207

Fax: (225) 381-9197

Errol.King@phelps.com

Attorneys for Defendant MultiPlan, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LD, DB, BW, RH, and CJ on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

UNITED BEHAVIORAL HEALTH, a
California Corporation, and MULTIPLAN,
INC., a New York Corporation,

Defendants.

Case No. 4:20-cv-02254-YGR
Related Case No. 4:20-cv-02249-YGR

**MULTIPLAN, INC.'S NOTICE OF MOTION
AND MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Fed. R. Civ. P. 9(b) and 12(b)(6)]

Date: Tuesday, December 22, 2020
Time: 2:00 p.m.
Judge: Hon. Yvonne Gonzales Rogers
Courtroom: Courtroom 1, Fourth Floor

First Amended Complaint Filed:
September 25, 2020

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on December 22, 2020, at 2:00 p.m., or as soon
3 thereafter as counsel may be heard, before the Honorable Yvonne Gonzales Rogers in Courtroom 1
4 on the Fourth Floor of the Oakland Federal District Courthouse, located at 1301 Clay Street,
5 Oakland, California 94612, Defendant MultiPlan, Inc. (“MultiPlan”) will and hereby does move the
6 Court for an Order, pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, to
7 dismiss the First Amended Class Action Complaint (“FAC”) filed by Plaintiffs, LD, DB, BW, RH,
8 and CJ, on behalf of themselves and all others similarly situated (“Plaintiffs”), on the following
9 grounds:

10 1. Plaintiffs’ first cause of action for violation of the Racketeer Influenced and Corrupt
11 Organizations Act (“RICO”), 18 U.S.C. § 1962(c) (Count I), and Plaintiffs’ second cause of action
12 for conspiracy to violate RICO, 18 U.S.C. § 1962(d) (Count II), fail to state a claim against
13 MultiPlan upon which relief can be granted.

14 2. Plaintiffs’ remaining causes of action for equitable relief to enjoin acts and/or
15 practices pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C.
16 § 1132(a)(3)(A) (Count VII) and for other appropriate equitable relief pursuant to common law
17 (Count VIII) also fail to state a claim against MultiPlan upon which relief can be granted.

18 Pursuant to L.R. 7-2(b)(3), MultiPlan requests that the Court dismiss the FAC in its entirety
19 with prejudice. This Motion is based on this Notice of Motion, the Memorandum of Points and
20 Authorities attached, all pleadings on file with this Court, and on such oral arguments as may be
21 presented at the hearing on this matter.

1 DATED: October 30, 2020

2 By: /s/ Moe Keshavarzi

3 Moe Keshavarzi
4 David Dworsky
5 Sheppard Mullin
6 333 South Hope Street, 43rd Floor
7 Los Angeles, CA 90071
8 Telephone: (213) 620-1780
9 Fax: (213) 620-1398

10 and

11 Errol J. King, Jr.
12 Phelps Dunbar LLP
13 II City Plaza
14 400 Convention Street, Suite 1100
15 Baton Rouge, Louisiana 70802
16 Telephone: (225) 376-0207
17 Fax: (225) 381-9197
18 Attorneys for Defendant, MultiPlan, Inc.
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
MEMORANDUM OF POINTS AND AUTHORITIES	1
INTRODUCTION	1
STATEMENT OF ISSUES TO BE DECIDED.....	3
ARGUMENT	4
I. Plaintiffs Once Again Fail To Satisfy The Heightened Pleading Standard Of Rule 9(b).....	4
II. Plaintiffs Still Fail To Meet The Plausibility Standard Of <i>Twombly/Iqbal</i>	7
III. Plaintiffs Again Fail To Make Out Their Civil RICO Claims	8
A. Plaintiffs Fail To Adequately Plead A “Pattern of Racketeering Activity”	9
B. Plaintiffs Fail To Adequately Plead An “Association-In-Fact” Enterprise.....	11
C. Plaintiffs Fail To Adequately Plead RICO Standing And Proximate Causation	13
IV. Plaintiffs Also Fail To State A Claim For Equitable Relief.....	15
A. MultiPlan Is Not An ERISA Fiduciary, And Plaintiffs Do Not Plead Sufficient Facts To Establish A Breach Of Fiduciary Duties Or Knowing Participation In Such A Breach	15
B. Plaintiffs Do Not Plead Appropriate Equitable Relief	19
CONCLUSION	22

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>Anza v. Ideal Steal Supply Corp.</i> , 547 U.S. 451 (2006)	14
<i>Ashcroft v. Iqbal</i> , 566 U.S. 662 (2009)	3, 7, 8
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)	3, 7, 8
<i>Berman v. Microchip Tech. Inc.</i> , 2018 WL 732667 (N.D. Cal. Feb. 6, 2018)	17, 20
<i>Bias v. Wells Fargo & Co.</i> , 942 F. Supp. 2d 915 (N.D. Cal. 2013)	12
<i>Bly-Magee v. California</i> , 236 F.3d 1014 (9th Cir. 2001)	5, 10
<i>Brown v. Cal. Law Enf't Ass'n</i> , 81 F. Supp. 3d 930 (N.D. Cal. 2015)	16, 17
<i>Bush v. Liberty Life Assurance Co. of Bos.</i> , 130 F. Supp. 3d 1320 (N.D. Cal. 2015)	18
<i>City of Los Angeles v. Lyons</i> , 461 U.S. 95 (1983)	20
<i>In re Computer Scis. Corp. ERISA Litig.</i> , 635 F. Supp. 2d 1128 (C.D. Cal. 2009)	17
<i>In re Crazy Eddie Secs. Litig.</i> , 714 F. Supp. 1285 (E.D.N.Y.1989)	10
<i>Cty. Of Monterey v. Blue Cross of Cal.</i> , 2019 U.S. Dist. LEXIS 120209 (N.D. Cal. July 18, 2019)	17
<i>Del Castillo v. Cmty. Child Care Council of Santa Clara Cty., Inc.</i> , 2019 WL 6841222 (N.D. Cal. Dec. 16, 2019)	18
<i>Depot, Inc. v. Caring for Montanans, Inc.</i> , 915 F.3d 643 (9th Cir. 2019)	20
<i>Diaz v. Gates</i> , 420 F.3d 897 (9th Cir. 2005)	13

1	<i>Dooley v. Crab Boat Owners Ass’n</i> ,	
2	2004 WL 902361 (N.D. Cal. Apr. 26, 2004).....	9
3	<i>Eclectic Props. E., LLC v. Marcus & Millichap Co.</i> ,	
4	751 F.3d 990 (9th Cir. 2014)	7, 11
5	<i>Ellis v. J.P. Morgan Chase & Co.</i> ,	
6	2015 WL 78190 (N.D. Cal. Jan. 6, 2015), <i>aff’d</i> , 752 Fed. App’x 380 (9th Cir.	
7	2018)	12
8	<i>Gilbert v. Bank of America</i> ,	
9	2014 WL 12644028 (N.D. Cal. Sept. 23, 2014).....	13
10	<i>Godecke v. Kinetic Concepts, Inc.</i> ,	
11	937 F.3d 1201 (9th Cir. 2019)	7
12	<i>Gomez v. Guthy–Renker, LLC</i> ,	
13	2015 WL 427004 (C.D. Cal. July 13, 2015)	13
14	<i>Great-West Life & Annuity Ins. Co. v. Knudson</i> ,	
15	534 U.S. 204 (2002).....	21
16	<i>Harris Tr. & Sav. Bank v. Salomon Smith Barney, Inc.</i> ,	
17	530 U.S. 238 (2000).....	18
18	<i>Hemi Grp., LLC v. City of New York</i> ,	
19	559 U.S. 1 (2010).....	15
20	<i>Herzfeld v. Teva Pharm. USA, Inc. Omnibus Welfare Plan</i> ,	
21	2020 WL 1864851 (C.D. Cal. Apr. 14, 2020).....	16, 17
22	<i>Holmes v. Sec. Inv. Prot. Corp.</i> ,	
23	503 U.S. 258 (1992).....	14
24	<i>Hopkins v. Am. Home Mortgage Servicing, Inc.</i> ,	
25	2014 WL 580769 (N.D. Cal. Feb. 13, 2014).....	12
26	<i>Huu Nguyen v. Nissan N. Am., Inc.</i> ,	
27	2017 WL 1330602 (N.D. Cal. Apr. 11, 2017).....	21
28	<i>In re Jamster Mktg. Litig.</i> ,	
	2009 WL 1456632 (S.D. Cal. May 22, 2009)	11, 13
	<i>Kanawi v. Bechtel Corp.</i> ,	
	590 F. Supp. 2d 1213 (N.D. Cal. 2008)	15
	<i>Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.</i> ,	
	940 F.2d 397 (9th Cir. 1991)	10

1	<i>Lesnik v. Eisenmann SE,</i>	
2	374 F. Supp. 3d 923 (N.D. Cal. 2019)	4, 9
3	<i>McBean v. United of Omaha Life Ins. Co.,</i>	
4	2019 WL 1508456 (S.D. Cal. Apr. 5, 2019)	17
5	<i>Methodist Hosp. of S. Cal. v. Blue Cross of Cal.,</i>	
6	2010 WL 11508022 (C.D. Cal. Feb. 26, 2010)	10
7	<i>Miscellaneous Service Workers, Drivers & Helpers v. Philco–Ford Corp.,</i>	
8	661 F.2d 776 (9th Cir.1981)	10
9	<i>Odom v. Microsoft Corp.,</i>	
10	486 F.3d 541 (9th Cir. 2007)	9
11	<i>Richardson v. Dallas R. Hall & Associates,</i>	
12	1996 WL 308261 (N.D. Cal. May 23, 1996).....	10, 11
13	<i>Saniefar v. Moore,</i>	
14	2017 WL 5972747 (E.D. Cal. Dec. 1, 2017)	11
15	<i>Schuman v. Microchip Tech. Inc.,</i>	
16	302 F. Supp. 3d 1101 (N.D. Cal. 2018)	16, 21
17	<i>Semegen v. Weidner,</i>	
18	780 F.2d 727 (9th Cir. 1985)	4
19	<i>Sereboff v. Mid Atlantic Med. Servs., Inc.,</i>	
20	547 U.S. 356 (2006)	21
21	<i>Skinner v. Northrop Grumman Ret. Plan B,</i>	
22	673 F.3d 1162 (9th Cir. 2012)	21
23	<i>Smith v. Ayres,</i>	
24	845 F.2d 1360 (5th Cir. 1988)	10
25	<i>Stitt v. Citibank, N.A.,</i>	
26	2015 WL 75237 (N.D. Cal. Jan. 6, 2015), <i>aff’d</i> , 748 Fed. App’x 99 (9th Cir.	
27	2018)	12, 13
28	<i>Sugarman v. Muddy Waters Capital LLC,</i>	
	2020 WL 633596 (N.D. Cal. Feb. 3, 2020).....	10
	<i>Swartz v. KPMG LLP,</i>	
	476 F.3d 756 (9th Cir. 2007)	4
	<i>Synopsis, Inc. v. Ubiquiti Networks, Inc.,</i>	
	313 F. Supp. 3d 1056 (N.D. Cal. 2018)	9

1	<i>Thole v. U.S. Bank N.A.</i> ,	
2	—U.S.—, 2020 WL 2814294 (U.S. June 1, 2020)	20
3	<i>Tucker v. Post Consumer Brands, LLC</i> ,	
4	2020 WL 1929368 (N.D. Cal. April 21, 2020).....	7
5	<i>United States v. Garrido</i> ,	
6	713 F.3d 985 (9th Cir. 2013)	10
7	<i>United States v. Miller</i> ,	
8	953 F.3d 1095 (9th Cir. 2020)	10
9	<i>United States v. Woody’s Trucking, LLC</i> ,	
10	2018 WL 443454 (D. Mont. Jan. 16, 2018)	10
11	<i>Urenia v. Pub. Storage</i> ,	
12	2014 WL 5781250 (C.D. Cal. Nov. 6, 2014)	10
13	<i>US Airways, Inc. v. McCutcheon</i> ,	
14	133 S.Ct. 1537 (2013)	21
15	<i>Vess v. Ciba-Geigy Corp. USA</i> ,	
16	317 F.3d 1097 (9th Cir. 2003)	4, 5, 11
17	<i>In re Wellpoint, Inc. Out-of-Network “UCR” Rates Litig.</i> ,	
18	2013 WL 12130034 (C.D. Cal. July 19, 2013).....	14
19	<i>In re Wellpoint, Inc. Out-of-Network “UCR” Rates Litig.</i> ,	
20	903 F. Supp. 2d 880 (C.D. Cal. 2012).....	9
21	<i>Wit v. United Behavioral Health</i> ,	
22	2017 WL 3478775 (N.D. Cal. Aug. 14, 2017)	21
23	<i>Woodell v. Expedia Inc.</i> ,	
24	2019 WL 3287896 (W.D. Wash. July 22, 2019)	12
25	Statutes	
26	18 U.S.C. § 1341.....	9
27	18 U.S.C. § 1343.....	9
28	18 U.S.C. § 1961(1).....	9
	18 U.S.C. § 1962(c), (d).....	8, 9, 12, 22
	29 U.S.C. § 1002(21)(A).....	16
	29 U.S.C. § 1132(a)(1)(B).....	19
	29 U.S.C. § 1132(a)(3).....	16

Other Authorities

29 C.F.R. § 2509.75-8, D-2.....	16
Fed. R. Civ. P. 8(a)	3, 7
Fed. R. Civ. P. 9(b)	<i>passim</i>
Fed. R. Civ. P. 12(b)(6).....	<i>passim</i>
Local Rule 7-4	3

MEMORANDUM OF POINTS AND AUTHORITIES¹

Defendant MultiPlan, Inc. (“MultiPlan”) respectfully submits this Memorandum of Points and Authorities in support of its Motion to Dismiss the First Amended Class Action Complaint (“FAC”) filed by Plaintiffs, LD, DB, BW, RH, and CJ, on behalf of themselves and all others similarly situated (“Plaintiffs”), pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6) (the “Motion”), as follows:

INTRODUCTION

This is Plaintiffs’ second attempt to plead causes of action under the Racketeer Influenced and Corrupt Organizations Act (“RICO”) and the Employee Retirement Income Security Act of 1974 (“ERISA”) relating to the alleged underpayment of health benefit claims submitted by non-party, out-of-network substance abuse centers, including Summit Estate, Inc. (“Summit Estate”), for Intensive Outpatient Program (“IOP”) treatment services provided to patients with health insurance policies “administered or issued” by United Behavioral Health, Inc. (“United”). But despite nearly 80 pages and more than 500 paragraphs of allegations, the FAC is completely bereft of any of the details this Court found missing from Plaintiffs’ initial Class Action Complaint (“Initial Complaint”) in its August 26, 2020 Order Granting Motions to Dismiss with Leave to Amend (“Dismissal Order”) [Rec. Doc. No. 55].

The central premise of Plaintiffs’ allegations has not substantively changed. Plaintiffs continue to allege that their benefit plan documents required United to reimburse claims for out-of-network IOP services at the usual, customary and reasonable rate (“UCR”), and that United coordinated and conspired with MultiPlan² to systematically undervalue and fraudulently underpay such claims on behalf of its patient-insureds. Plaintiffs also allege that, because of Defendants’ conduct, they were balanced-billed and forced to pay out-of-pocket any amounts that United failed to reimburse Plaintiffs’ providers under the policies. And rather than cure the defects in their Initial

¹ Unless otherwise indicated, all emphasis is added and all internal quotation marks and citations are omitted.

² United Behavioral Health, Inc. and MultiPlan, Inc. are hereinafter collectively referred to as “Defendants.”

1 Complaint, Plaintiffs simply substitute MultiPlan as a defendant in place of its affiliate, Viant, Inc.
 2 (“Viant”);³ add some new general allegations regarding the FAIR Health Database, Viant’s
 3 purported repricing methodology, and MultiPlan’s alleged business dealings with United; convert
 4 their claim for “other appropriate equitable relief” to one under “common law,” rather than ERISA
 5 Section 502(a)(3); and otherwise repeat and rely on the same generic, catchall allegations that fail
 6 to state a plausible claim upon which relief may be granted.

7 Indeed, much of what Plaintiffs have added in the FAC was seemingly designed to fabricate
 8 a façade of allegedly carefully planned and orchestrated actions, based on discussions and other
 9 dealings between MultiPlan and its co-Defendant, United, and among United and its competitors,
 10 to defraud Plaintiffs and to line their pockets, all to the detriment of providers and their patients. As
 11 before, however, this newly alleged, vast conspiracy fails to present a plausible theory of
 12 wrongdoing, particularly when held up against the legitimate cost-containment efforts of Defendants
 13 that are reflected in their entirely above-board business dealings. Yet, to hear Plaintiffs tell it,
 14 everything that MultiPlan and Viant do is designed with one purpose — to establish and justify
 15 unreasonably low and inaccurate pricing information that can be passed on to United and other
 16 insurers for their use in underpaying the claims of patients, such as Plaintiffs, with MultiPlan and
 17 Viant, among others, reaping the financial rewards. And, of course, all of this allegedly has been
 18 done in secret, through clandestine meetings and employing “whitepapers” with stratagems to be
 19 employed by the evil-minded participants.

20 Such fanciful speculation as to Defendants’ motives and outright mischaracterization of
 21 MultiPlan’s and Viant’s systems and data analyses, as well as United’s use of the same, does nothing
 22 to alter the fact that Plaintiffs have no legally cognizable claims against Defendants. Accordingly,
 23 because the FAC contains the same substantive pleading defects as Plaintiffs’ Initial Complaint, this

24
 25 ³ Despite the continued focus on alleged actions of Viant in connection with the underlying patient
 26 claims, Plaintiffs’ substitution of MultiPlan for Viant appears to reflect Plaintiffs’ belief that,
 27 because of the contractual relationship between United and MultiPlan, as well as interaction of
 28 certain MultiPlan representatives with United personnel, MultiPlan is now the proper party to be
 sued. MultiPlan reserves the right to address this issue in subsequent motion practice. Regardless,
 MultiPlan, on its own and on behalf of Viant, denies any alleged wrongdoing and asserts that
 Plaintiffs have failed to make out any claims against either entity.

1 Court should grant MultiPlan's Motion and dismiss Plaintiffs' FAC in its entirety,⁴ and with
 2 prejudice,⁵ pursuant to Rule 12(b)(6).

3 STATEMENT OF ISSUES TO BE DECIDED

4 Pursuant to Local Rule 7-4, MultiPlan identifies the following issues that are before the
 5 Court for decision in connection with this Motion to Dismiss Plaintiffs' FAC:

- 6 1. Whether Plaintiffs have failed to plead fraud "with particularity" as required by Fed.
 7 R. Civ. P. 9(b), thereby requiring the dismissal of all of their claims against
 MultiPlan, which sound and are grounded in fraud;
- 8 2. Whether Plaintiffs have failed to meet the "plausibility" standard of Fed. R. Civ. P.
 9 8(a), as articulated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*,
 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 566 U.S. 662 (2009), thereby requiring
 10 the dismissal of all of their claims against MultiPlan under Fed. R. Civ. P. 12(b)(6);
- 11 3. Subsumed within the foregoing, whether Plaintiffs' RICO claims (Counts I and II)
 12 are subject to dismissal because Plaintiffs have failed to adequately plead: (a) a
 "pattern of racketeering activity;" (b) that Defendants formed an "association-in-
 13 fact" RICO enterprise; (c) that MultiPlan "conducted" the affairs of the purported
 enterprise; or (d) that any predicate act caused injury to Plaintiffs' business or
 property;
- 14 4. Whether Plaintiffs' claim for "equitable relief to enjoin acts and/or practices" under
 15 ERISA Section 502(a)(3) (Count VII) is subject to dismissal because: (a) MultiPlan
 is not an ERISA fiduciary; (b) Plaintiffs allege no breach of fiduciary duties or
 16 knowing participation in a breach of fiduciary duties by MultiPlan; or (c) Plaintiffs
 fail to plead facts to support a distinct basis to seek equitable relief under Section
 502(a)(3);
- 17 5. And finally, whether Plaintiffs' claim for "other appropriate equitable relief"
 18 pursuant to "common law" (Count VIII) is subject to dismissal because Plaintiffs do
 not plead sufficient facts to satisfy the stringent pleading requirements (a) Plaintiffs
 19 do not identify any particular assets or funds that can reasonably be traced to
 MultiPlan; and (b) Plaintiffs do not plead sufficient facts to establish that MultiPlan
 20 was unjustly enriched by Plaintiffs.

21 The answer to each of these questions remains a simple and straightforward "yes." Despite
 22 their attempts in the FAC to change or augment the conclusory allegations of their Initial Complaint,
 23 Plaintiffs still do not set forth a plausible case against MultiPlan or its co-Defendant, United. In
 24 particular, the FAC, like Plaintiffs' Initial Complaint, fails to specify the who, what, when, where,

25
 26 ⁴ In the event the Court does not dismiss all of Plaintiffs' claims, MultiPlan reserves all of its rights
 to oppose class certification.

27 ⁵ MultiPlan also refers to, and by such reference, adopts and incorporates as if fully set forth herein,
 28 the arguments and authorities raised by co-Defendant United in its separate Motion to Dismiss
 Plaintiffs' FAC, filed this date.

1 or how of any alleged misrepresentations and fraudulent statements on the part of MultiPlan that
 2 supposedly led to Plaintiffs' injuries, which is an essential element of their fraud-based claims and
 3 an absolute requirement of Rule 9(b). The FAC also fails to show how Defendants' legitimate
 4 business dealings — which, by Plaintiffs' own admission, resulted in the payment of every claim
 5 submitted — are “racketeering” pursuant to RICO, or otherwise entitle Plaintiffs to damages or
 6 equitable relief as against MultiPlan, a non-fiduciary under ERISA. Therefore, as was the case with
 7 the Initial Complaint, the FAC should be dismissed in its entirety, and with prejudice for failure to
 8 state a plausible claim upon which relief can be granted.

9 ARGUMENT

10 **I. Plaintiffs Once Again Fail To Satisfy The Heightened Pleading Standard Of Rule 9(b).**

11 It remains the case with respect to the FAC that, in any instance in which fraud is directly or
 12 indirectly pled (*i.e.*, Plaintiffs' civil RICO claims in Counts I and II and Plaintiffs' claims for
 13 equitable relief in Counts VII and VIII), Plaintiffs fail to satisfy the heightened pleading standard of
 14 Fed. R. Civ. P. 9(b). To satisfy this standard, the allegations of the FAC must be “specific enough
 15 to give defendants notice of the particular misconduct which is alleged to constitute the fraud
 16 charged so that they can defend against the charge and not just deny that they have done anything
 17 wrong.” *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985). Thus, Plaintiffs must allege “an
 18 account of the time, place, and specific content of the false representations as well as the identities
 19 of the parties to the misrepresentations.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007).
 20 In other words, “[a]verments of fraud must be accompanied by ‘the who, what, when, where, and
 21 how’ of the misconduct charged.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir.
 22 2003). Plaintiffs must also plead facts explaining why a statement was false when it was made. *See*
 23 *Lesnik v. Eisenmann SE*, 374 F. Supp. 3d 923, 937–38 (N.D. Cal. 2019).

24 In the Ninth Circuit, Rule 9(b) applies where a complaint “sounds” or is “grounded” in fraud.
 25 *Vess*, 317 F.3d at 1103. This is true where a complaint alleges fraud as an essential element of the
 26 claim for relief or where fraud is not a necessary element but the plaintiff alleges what amounts to
 27 fraudulent conduct. *Id.* at 1103–04. While the standard is somewhat difficult to apply, the rationale
 28 behind it rests on the preference for substance over form: where a complaint alleges conduct which

1 in effect amounts to fraud, defendants are entitled for policy reasons to the enhanced reliability and
 2 notice that accompany more detailed pleadings. *Bly-Magee v. California*, 236 F.3d 1014, 1018 (9th
 3 Cir. 2001). And, as the Court noted in at page 13 of its Dismissal Order, “Rule 9(b)’s requirement
 4 that ‘[i]n all averments or fraud or mistake, the circumstances constituting fraud or mistake shall be
 5 stated with particularity’ applies to civil RICO fraud claims,” citing *Edwards v. Marin Park, Inc.*,
 6 356 F.3d 1058, 1065–66 (9th Cir. 2004).

7 The Ninth Circuit has also recognized that, when a complaint “is grounded in fraud and its
 8 allegations fail to satisfy the heightened pleading requirements of Rule 9(b), a district court may
 9 dismiss the complaint.” *Vess*, 317 F.3d at 1107. “[S]uch dismissals are appropriate,” even though
 10 “there is no explicit basis in the text of the federal rules for the dismissal of a complaint for failure
 11 to satisfy 9(b).” *Id.* Thus, a motion to dismiss a complaint “under Rule 9(b) for failure to plead with
 12 particularity is the functional equivalent of a motion to dismiss under Rule 12(b)(6) for failure to
 13 state a claim.” *Id.*

14 The FAC alleges fraud, using that word or comparable ones, at numerous points. [*See, e.g.*,
 15 FAC, ¶¶ 17–19, 26, 28–30, 70, 73, 75, 89, 109–09, 111–12, 115–23, 126–37, 147, 150–57, 159,
 16 161, 175–76, 181, 190–92, 198, 205, 208, 212–213, 223–25, 237, 263–68, 301–05, 331–35, 359–
 17 63, 386–90, 404–11, 413–17, 424–26, 429–30, 437(c)–(g), (m), & (p), 453, 455, 461, 519, and 524].
 18 The FAC also employs other pejorative terms, such as “scheme,” “lies,” “secrets,” “manipulations,”
 19 “misrepresentations,” “artificial,” and “fig leaf,” that expressly or impliedly paint MultiPlan and its
 20 co-defendant United as fraudsters. [*See, e.g., id.* ¶¶ 13, 17–21, 96, 122–23, 133, 135, 152–56, 159,
 21 179–80, 185, 191–92, 198, 206–08, 214–16, 220, 222, 224–27, 230, 232, 241, 264–65, 302, 332,
 22 360, 387, 410, 424].⁶ Yet, when all of the allegations in the FAC are examined, one thing is apparent:
 23 they are devoid of specific factual details that meet the particularity requirements of Rule 9(b). The
 24
 25

26
 27 ⁶ The FAC also makes clear that Plaintiffs’ ERISA and RICO claims rely upon the exact same set
 28 of facts and allegedly fraudulent conduct. [*See id.* ¶ 32]. Thus, it is indisputable that all of Plaintiffs’
 claims against MultiPlan, as asserted in Counts I, II, VII, and VIII of the FAC, “sound” or are
 “grounded” in fraud.

1 law is clear that conclusory allegations such as those made by Plaintiffs throughout the FAC are
2 nothing more than makeweight to be ignored by the Court.

3 Moreover, while Plaintiffs tried to present “representative” claims involving each of the
4 Plaintiffs and an “exemplar” Patient Advocacy Department (“PAD”) letter, presumably attempting
5 to create the appearance of specificity, [*see* FAC, ¶¶ 242–411], they failed to do so, and also failed
6 to show where or how MultiPlan was involved at all. In particular, Plaintiffs still have not set forth
7 any “specifics” regarding the “time, place, and specific content of the fraudulent communications
8 at issue, or identif[ied] the person or persons involved in such communications,” nor do they “aver
9 factual matter to raise the inference that such communications were sent over the United States wires
10 or United States mail across state lines.” [*See* Dismissal Order, at pp. 16–17]. They also fail to plead
11 any facts “to raise the inference that Viant’s PAD letters were fraudulent,” [*id.* at 17], much less any
12 facts explaining how those PAD letters actually misled Plaintiffs or how MultiPlan or Viant used
13 those letters to defraud and injure Plaintiffs.

14 Additionally, and perhaps more importantly, nowhere in the FAC do Plaintiffs identify any
15 misrepresentations or omissions whatsoever on the part of MultiPlan that could plausibly have
16 misled them into believing that they would receive a particular rate for their services. None of the
17 snippets from the plan documents or correspondence that Plaintiffs selectively quote, nor any of the
18 exemplary claims that Plaintiffs cherry-pick and attempt to describe in the FAC, contain any promise
19 or representation on the part of MultiPlan regarding any particular reimbursement rate.

20 Finally, while the FAC does purport to mention certain representations that United allegedly
21 made in various plan documents and explanations of benefits (“EOBs”) that it provided to Plaintiffs
22 and in certain verification calls with Plaintiffs’ providers, it fails to attribute those plan documents,
23 EOBs, verification calls, or any of the asserted misrepresentations contained therein to MultiPlan.
24 Instead, the FAC simply lumps MultiPlan together with United using vague and conclusory
25 allegations, including that “United and MultiPlan coordinate[d] their efforts” and “worked together
26 to develop the false and fraudulent UCR rates that were applied to out-of-network IOP claims.” [*See*
27 FAC ¶¶ 117, 134]. As a result, all of Plaintiffs’ claims against MultiPlan in the FAC are subject to
28 dismissal for failure to allege those claims “with specificity” as required by Rule 9(b).

1 **II. Plaintiffs Still Fail To Meet The Plausibility Standard Of *Twombly/Iqbal*.**

2 Cutting across all of the allegations in the FAC is another fundamental flaw: Plaintiffs have
 3 failed to present a plausible claim as required by *Twombly/Iqbal* alleging that MultiPlan (or United)
 4 has done anything improper or illegal in engaging in above-board, contractual dealings to control
 5 excessive health care costs. Fed. R. Civ. P. 8(a) requires such a showing, and in its absence, the
 6 FAC is subject to dismissal under Fed. R. Civ. P. 12(b)(6). *See Godecke v. Kinetic Concepts, Inc.*,
 7 937 F.3d 1201, 1208 (9th Cir. 2019) (dismissal may be based on either “ the lack of a cognizable
 8 legal theory or the absence of sufficient facts alleged under a cognizable legal theory”); *Tucker v.*
 9 *Post Consumer Brands, LLC*, 2020 WL 1929368, at *2 (N.D. Cal. April 21, 2020) (Gonzales-
 10 Rogers, J.) (same).

11 The analysis required under *Twombly* and *Iqbal* is straightforward. “Factual allegations must
 12 be enough to raise a right to relief above the speculative level [. . .] on the assumption that all of the
 13 allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 555. Thus, to
 14 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to
 15 “state a claim to relief that is plausible on its face.” *Id.* at 570. A claim has “facial plausibility when
 16 the plaintiff pleads factual content [that] allows the court to draw the reasonable inference that the
 17 defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 663. While not akin to a
 18 “probability requirement,” the plausibility standard “calls for enough facts to raise a reasonable
 19 expectation that discovery will reveal evidence” to support a plaintiff’s claim. *Twombly*, 550 U.S.
 20 at 556. However, if a plaintiff “ha[s] not nudged [its] claims across the line from conceivable to
 21 plausible, [its] complaint must be dismissed.” *Id.* at 570. *See also Eclectic Props. E., LLC v. Marcus*
 22 *& Millichap Co.*, 751 F.3d 990, 995 (9th Cir. 2014). To this end, the Supreme Court made clear in
 23 *Twombly* that a complaint offering mere “labels and conclusions” or “a formulaic recitation of the
 24 elements of a cause of action” is not sufficient to defeat a motion to dismiss under Rule 12(b)(6).
 25 *Twombly*, 550 U.S. at 555. Nor is a complaint sufficient if it tenders only “naked assertion[s]” devoid
 26 of “further factual enhancement.” *Id.* at 557.

27 Importantly, in *Iqbal*, the Supreme Court went on to explain the “working principles”
 28 underlying its decision in *Twombly*, and instructed that courts considering motions to dismiss should

1 adopt a “two-pronged approach” in applying those principles: (1) eliminate any allegations in the
 2 complaint that are merely legal conclusions; and (2) where there are well-pleaded factual
 3 allegations, “assume their veracity and then determine whether they plausibly give rise to an
 4 entitlement to relief.” *Iqbal*, 566 U.S. at 679. The Supreme Court also held in *Iqbal*, as it had in
 5 *Twombly*, that courts may infer from the factual allegations in the complaint, “obvious alternative
 6 explanation[s],” which suggest lawful conduct rather than the unlawful conduct the plaintiff would
 7 ask the court to infer. *Id.* at 682 (quoting *Twombly*, 550 U.S. at 567).

8 Applying these working principles to the FAC in this matter leads to the inevitable
 9 conclusion that Plaintiffs still have not made out a plausible case against MultiPlan. First, shorn of
 10 all of the “legal conclusions” — which, in reality, make up the bulk of Plaintiffs’ allegations — the
 11 FAC strives mightily to cast MultiPlan and United as focused on nothing but fraud and deception
 12 aimed at depriving Plaintiffs of payments for services rendered at UCR rates in order to line their
 13 pockets with ill-gotten gains. However, when one considers the “obvious alternative explanation”
 14 of managed care programs designed and implemented to hold down excessive health care costs for
 15 the benefit of plan sponsors, plan participants, and society as a whole, then MultiPlan’s and United’s
 16 conduct appears in a whole new light — a much more plausible one than Plaintiffs’ tale of
 17 intentional and negligent misrepresentations, conspiracy, racketeering, and breach of fiduciary
 18 duties. Second, other than conclusory and unsupported characterizations (which, again, the Court
 19 must disregard), nothing in Plaintiffs’ recitation of purported meetings between MultiPlan and
 20 United, or the purported exchange of information in whitepapers, PAD letters, and other supposed
 21 communications, presents a plausible case of wrongdoing on the part of MultiPlan. Therefore, under
 22 *Twombly/Iqbal*, any claims based upon such allegations should be dismissed.

23 **III. Plaintiffs Again Fail To Make Out Their Civil RICO Claims.**

24 This Court rejected Plaintiff’s civil RICO claims in the Initial Complaint on several grounds.
 25 [See Dismissal Order, at pp. 13–19]. Now, in Count I of the FAC, Plaintiffs attempt to rectify these
 26 deficiencies and overcome dismissal by putting forth a new set of allegations claiming violations of
 27 18 U.S.C. § 1962(c). Plaintiffs also attempt, in Count II of the FAC, to allege a separate, express
 28 cause of action for a RICO conspiracy violative of 18 U.S.C. § 1962(d). However, as this Court has

1 already noted, no RICO conspiracy claim can stand without an underlying substantive RICO claim.
 2 [*see id.* at 18], and to successfully state a substantive RICO claim under § 1962(c), a plaintiff “must
 3 plausibly allege that the defendant participated, directly or indirectly, in (1) the conduct (2) of an
 4 enterprise that affects interstate commerce, (3) through a pattern (4) of racketeering activity.”
 5 *Lesnik*, 374 F. Supp. 3d at 958. *See also Odom v. Microsoft Corp.*, 486 F.3d 541, 547 (9th Cir. 2007)
 6 (en banc). For the following reasons, Plaintiffs once again fail to allege sufficient facts to establish
 7 a § 1962(c) violation, thereby requiring the dismissal, with prejudice, of their civil RICO claims in
 8 Counts I and II of the FAC.

9 **A. Plaintiffs Fail To Adequately Plead A “Pattern Of Racketeering Activity.”**

10 “Racketeering activity” is defined under the RICO statute to mean “any act of threat
 11 involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene
 12 matter, [drugs].” 18 U.S.C. § 1961(1). The definition also goes on to include certain state law crimes
 13 and any act indictable under certain federal statutes and federal offenses.” *Id.* To plead a pattern
 14 under RICO, “at least two predicate acts of racketeering activity need to be alleged.” *Synopsis, Inc.*
 15 *v. Ubiquiti Networks, Inc.*, 313 F. Supp. 3d 1056, 1077 (N.D. Cal. 2018). Additionally, “where
 16 RICO is asserted against multiple defendants,” as in the instant case, “a plaintiff must allege at least
 17 two predicate acts by *each* defendant.” *In re Wellpoint, Inc. Out-of-Network “UCR” Rates Litig.*,
 18 903 F. Supp. 2d 880, 914 (C.D. Cal. 2012) (emphasis in original); *accord, Dooley v. Crab Boat*
 19 *Owners Ass’n*, 2004 WL 902361, *5 (N.D. Cal. Apr. 26, 2004).

20 In the FAC, Plaintiffs make another attempt to allege mail fraud (18 U.S.C. § 1343) and wire
 21 fraud (18 U.S.C. § 1341) as the predicate acts to support their RICO claim. [*See* FAC, ¶¶ 18, 29, 115,
 22 121, 455, 461]. But rather than cure the substantial pleading defects identified on pages 16 and 17
 23 of the Court’s Dismissal Order, Plaintiffs continue to rely upon conclusory assertions that mimic
 24 the language of the RICO statute, which are not enough “to raise the reasonable inference that
 25 [D]efendants committed at least two instances of mail fraud or wire fraud” to support a pattern of
 26 racketeering activity. [*See* Dismissal Order, pp. 16–17].

27 Both mail fraud and wire fraud have four essential elements, which must be pled in
 28 conformity with Rule 9(b): “(1) a scheme to defraud, (2) the statements made and facts omitted as

1 part of the scheme were material, (3) use of the wires, or United States mail, in furtherance of the
 2 scheme, and (4) a specific intent to deceive or defraud.” *United States v. Woody's Trucking, LLC*,
 3 2018 WL 443454, * (D. Mont. Jan. 16, 2018) (citing *United States v. Woods*, 335 F.3d 993, 997–99
 4 (9th Cir. 2003)). *See also Sugarman v. Muddy Waters Capital LLC*, 2020 WL 633596, *4 (N.D.
 5 Cal. Feb. 3, 2020). As to the fourth element, the Ninth Circuit recently clarified that, to be guilty of
 6 mail or wire fraud, “a defendant must act with the intent not only to make false statements or utilize
 7 other forms of deception, but also to deprive a victim of money or property by means of those
 8 deceptions. In other words, a defendant must intend to deceive *and* cheat.” *United States v. Miller*,
 9 953 F.3d 1095, 1102 (9th Cir. 2020) (emphasis in original). Additionally, the mail and wire fraud
 10 statutes both include an “interstate nexus” requirement; in the case of mail fraud, this element is
 11 satisfied by the use of the United States postal service. *See Smith v. Ayres*, 845 F.2d 1360, 1366 (5th
 12 Cir. 1988). “A claim for wire fraud, however, requires that wire communication cross state lines.”
 13 *Richardson v. Dallas R. Hall & Associates*, 1996 WL 308261, *2 (N.D. Cal. May 23, 1996). *See*
 14 *also United States v. Garrido*, 713 F.3d 985, 998 (9th Cir. 2013).

15 Here, Plaintiffs have once again failed to plausibly allege mail or wire fraud by MultiPlan,
 16 let alone with the particularity that Rule 9(b) requires. The conclusory allegations of mail and wire
 17 fraud in the FAC fail at the outset because, as discussed above, Plaintiffs do not plead the “who,
 18 what, when, where, or how” of any fraud, by either Defendant. *See, e.g., Urenia v. Pub. Storage*,
 19 2014 WL 5781250, *6 (C.D. Cal. Nov. 6, 2014); *Methodist Hosp. of S. Cal. v. Blue Cross of Cal.*,
 20 2010 WL 11508022, at *11 (C.D. Cal. Feb. 26, 2010). *See also Bly-Magee*, 236 F.3d 1014 at 1018;
 21 *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 405 (9th Cir. 1991) (Rule 9(b)
 22 requires a RICO plaintiff requires a RICO plaintiff “to detail with particularity the time, place, and
 23 manner of each act of fraud, plus the role of each defendant in each scheme.”).⁷

24 _____
 25 ⁷ “In the context of civil RICO where the predicate acts are based on mail and wire fraud, the policies
 26 underlying Rule 9(b) are ‘especially important in RICO cases because of the harm to a person's
 27 reputation that allegations of “racketeering” may do.’ *In re Crazy Eddie Secs. Litig.*, 714 F. Supp.
 28 1285, 1292–93 (E.D.N.Y.1989). The allegations of fraud must include the time, place, and specific
 content of the false representation. *See Miscellaneous Service Workers, Drivers & Helpers v. Philco-Ford Corp.*, 661 F.2d 776, 782 (9th Cir.1981). Courts have also phrased the heightened
 pleading standard as requiring ‘the who, what, when, where, and how of the misconduct

1 The FAC’s allegations of mail and wire fraud are also insufficient because they do not plead
 2 that any wire communications crossed state lines — a necessary element to sustain a claim of wire
 3 fraud. The FAC alleges only that (1) some communications to further the alleged scheme were
 4 transmitted by wire, and that (2) “activities that span multiple states and affect interstate commerce”
 5 occurred. [See FAC, ¶¶ 18, 29, 31, 66, 75, 77, 115, 121, 179, 182–85, 398, 450, 455, 461]. There is
 6 no specific allegation describing any particular communication sent by “wire” (fax, phone, or
 7 otherwise) that crossed a state line, which is fatal to Plaintiffs’ claims. See *Saniefar v. Moore*, 2017
 8 WL 5972747, *10 (E.D. Cal. Dec. 1, 2017) (claim dismissed where no allegation of interstate
 9 communication); *Richardson*, 1996 WL 308261, *2. Also absent from the FAC are any factual
 10 allegations demonstrating a specific intent to deceive or defraud on the part of MultiPlan. And
 11 because Plaintiffs have similarly failed to alleged facts sufficient to show “the existence of a scheme
 12 which was reasonably calculated to deceive persons of ordinary prudence and
 13 comprehension,” fraudulent intent cannot be inferred. *Eclectic Properties E., LLC v. Marcus &*
 14 *Millichap Co.*, 751 F.3d 990, 1000 (9th Cir. 2014).

15 Therefore, as Plaintiffs still fail to establish that MultiPlan engaged in any “pattern of
 16 racketeering activity,” their RICO claims in Counts I and II of the FAC must be dismissed.

17 **B. Plaintiffs Fail To Adequately Plead An “Association-In-Fact” Enterprise.**

18 In addition to the foregoing, at pages 14 and 15 of its Dismissal Order, this Court considered,
 19 and squarely rejected, Plaintiffs’ initial attempt to plead the existence of an “association-in-fact”
 20 enterprise, allegedly consisting of United and Viant, acting in concert with a common purpose and
 21 each directing some part of the affairs of the alleged scheme for RICO purposes. [See Dismissal
 22 Order, pp. 14–15]. Plaintiffs seek to remedy that failure in the FAC by substituting MultiPlan for
 23 Viant as a participant in the alleged RICO enterprise. [See FAC, ¶¶ 110–137]. But despite the benefit
 24 and guidance of this Court’s Dismissal Order and Defendants’ prior motions to dismiss, Plaintiffs’
 25 new allegations in the FAC still come up short, as they do not address or rectify the fundamental
 26 flaws previously identified by this Court — namely, that: (1) “the ‘common purpose’ requirement

27 _____
 28 charged.’ *Vess v. Ciba-Geigy Corp.*, 317 F.3d 1097, 1106 (9th Cir.2003).” *In re Jamster Mktg. Litig.*, No. 05CV0819 JM (CAB), 2009 WL 1456632, at *4 (S.D. Cal. May 22, 2009).

1 is not met where, as here, the allegations in the complaint are consistent only with the execution of
 2 a routine contract or commercial dealing;” (2) “[s]imply being ‘a part’ of the enterprise or
 3 ‘performing services’ for the enterprise does not rise to the level of the direction required;” and (3)
 4 “[i]n the absence of allegations that raise the inference that either defendant performed actions to
 5 further a scheme rather than their own individual affairs pursuant to the contract just described, the
 6 conduct element is not satisfied.” [See Dismissal Order, pp. 14–15].

7 To sustain a RICO claim where an “association-in-fact” enterprise is concerned, Plaintiff
 8 must allege three separate elements: “(i) a common purpose of engaging in a course of conduct; (ii)
 9 evidence of an ongoing organization, formal or informal; and (iii) evidence that the various
 10 associates function as a continuing unit.” *Hopkins v. Am. Home Mortgage Servicing, Inc.*, 2014 WL
 11 580769, *4 (N.D. Cal. Feb. 13, 2014). The U.S. Supreme Court has also recognized “the basic
 12 principle” that § 1962(c) “imposes a distinctiveness requirement—that is, one must allege two
 13 distinct entities: a ‘person’ and an ‘enterprise’ that is not simply the same ‘person’ referred to by a
 14 different name.” *Bias v. Wells Fargo & Co.*, 942 F. Supp. 2d 915, 939 (N.D. Cal. 2013). In other
 15 words, liability under RICO “depends on showing that the defendants conducted or participated in
 16 the conduct of the ‘enterprise’s affairs,’ not just their own affairs.” *Id.* (emphasis in original).
 17 “Where the alleged association-in-fact is formed through routine contracts for services, the
 18 ‘common purpose’ element is unmet because the entities are pursuing their own individual economic
 19 interests, rather than a shared purpose.” *Woodell v. Expedia Inc.*, 2019 WL 3287896, *8 (W.D.
 20 Wash. July 22, 2019).⁸

21 Here, all of MultiPlan’s actions are attributable to its performance under the Network Access
 22 Agreement with United. Plaintiffs allege a litany of actions involving meetings, shared approaches
 23 to dealings with providers, analyses of claims to develop pricing parameters, and the like, but they
 24 still fail to show that these are anything more than the conduct of a business relationship whose
 25 ultimate goal is cost-containment designed to benefit patients, employers, and society as a whole.

26
 27 ⁸ See *Stitt v. Citibank, N.A.*, 2015 WL 75237, at *5 (N.D. Cal. Jan. 6, 2015), *aff’d*, 748 Fed. App’x
 28 99 (9th Cir. 2018); see also *Ellis v. J.P. Morgan Chase & Co.*, 2015 WL 78190, at *4–6 (N.D. Cal.
 Jan. 6, 2015), *aff’d*, 752 Fed. App’x 380, 382 (9th Cir. 2018).

1 Regardless of their alleged payment expectations, Plaintiffs have not shown that MultiPlan and
 2 United set out to, or did in fact, engage in a pattern of racketeering that defrauded them by means
 3 of a RICO enterprise, rather than engage in normal business activity.⁹ Failing to identify any specific
 4 factual allegations in support of the common purpose of allegedly underpaying IOP services to
 5 increase the profits of the enterprise warrants dismissal of Plaintiffs' RICO claim. *See In re Jamster*
 6 *Mktg. Litig.*, 2009 WL 1456632, at *6 (S.D. Cal. May 22, 2009).

7 Moreover, and “[d]espite the wide variety of approaches adopted by courts in interpreting
 8 the requirements of RICO, there has been a remarkable uniformity in their conclusion that RICO
 9 liability must be predicated on a relationship more substantial than a routine contract between a
 10 service provider and its client.” *Gomez v. Guthy–Renker, LLC*, 2015 WL 427004, *11 (C.D. Cal.
 11 July 13, 2015) (listing cases). In the end, the FAC fails to allege that MultiPlan did anything more
 12 than carry out the terms of its contract with United. On this showing, Plaintiffs' enterprise
 13 allegations fail as a matter of law and warrant dismissal of Plaintiffs' civil RICO claims. *See, e.g.,*
 14 *Stitt*, 2015 WL 75237, at *5.

15 **C. Plaintiffs Fail To Adequately Plead RICO Standing And Proximate Causation.**

16 Finally, this Court has already dismissed Plaintiffs' RICO claims for lack of standing and
 17 proximate cause, [*see* Dismissal Order, pp. 18–19], and Plaintiffs' amendments do nothing to save
 18 them. It is well-settled that, in order to state a claim under RICO, Plaintiffs “must allege they
 19 suffered injury to their ‘business or property’ as a proximate result of the alleged racketeering
 20 activity.” *Gilbert v. Bank of America*, 2014 WL 12644028, *4 (N.D. Cal. Sept. 23, 2014). That is
 21 because “[w]ithout a harm to a specific business or property interest — a categorical inquiry
 22 typically determined by reference to state law — there is no injury to business or property within
 23 the meaning of RICO.” *Diaz v. Gates*, 420 F.3d 897, 900 (9th Cir. 2005) (en banc). Additionally,
 24 Plaintiffs must show that a RICO predicate offense “not only was a “but for” cause of [their] injury,
 25 _____

26 ⁹ Plaintiffs allege that “[t]he relationships between United MultiPlan are not merely standard
 27 commercial contracts; instead, United and MultiPlan exploit their contractual arrangements to
 28 provide false legitimacy and cover to their racketeering activity.” [FAC, ¶ 30]. Such conclusory
 pleading avails Plaintiffs nothing in advancing their RICO claim. It remains implausible.

1 but was the proximate cause as well.” *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992).
 2 “When a Court evaluates a RICO claim for proximate causation, the central question it must ask is
 3 whether the alleged violation led directly to the plaintiff’s injuries.” *Anza v. Ideal Steal Supply*
 4 *Corp.*, 547 U.S. 451, 461 (2006). Accordingly, “[i]f Plaintiffs are unable to show that anyone relied
 5 on Defendants’ allegedly wrongful conduct, they cannot show that they were injured by reason of a
 6 RICO predicate offense,” and their RICO claims must be dismissed. *See In re Wellpoint, Inc. Out-*
 7 *of-Network “UCR” Rates Litig.*, 2013 WL 12130034, *17 (C.D. Cal. July 19, 2013) (dismissing
 8 civil RICO claim premised on mail fraud brought by health care subscribers and providers alleging
 9 underpayment of UCR rates).

10 In the FAC, Plaintiffs provide only conclusory allegations as to the existence of proximate
 11 cause, claiming that “Plaintiffs’ and other IOP patients have been directly and proximately injured
 12 by Defendants’ fraudulent conduct” because they were forced to pay “the under-reimbursed amount
 13 out of their own pockets to [their] treatment providers,” and that “Plaintiffs’ injuries are not just the
 14 foreseeable and natural consequence of Defendants’ scheme, they are the objective of the scheme.”
 15 [See FAC, ¶¶ 412–17; *see also* ¶¶ 7, 29, 54, 73, 83, 89, 126, 180, 237, 242, 261, 269, 299, 306, 328,
 16 336, 357, 364, 384, 391, 456, 462]. But as the above cases show, it is not enough for Plaintiffs to
 17 simply assert that they overpaid for services; instead, they are required to plead a causal link between
 18 an alleged injury to business or property and MultiPlan’s alleged predicate acts of racketeering —
 19 *i.e.*, the PAD letters — which they have totally failed to do.

20 Notwithstanding vague assertions in other parts of the FAC that they “relied upon [...]”
 21 representations made by Defendants,” [see FAC ¶ 519], Plaintiffs do not — and cannot — allege
 22 that they or anyone else took any steps *in reliance on* the so-called PAD letters, which were truthful,
 23 accurate communications that Plaintiffs did not receive until after they sought treatment and
 24 received the services at issue. Plaintiffs also do not allege any facts to suggest that MultiPlan was in
 25 any way responsible for the plan documents issued to Plaintiffs or that MultiPlan was part of the
 26 process by which Plaintiffs’ providers sought authorization or verification of coverage before
 27 Plaintiffs were admitted to treatment; therefore, nothing that was communicated to Plaintiffs by
 28 MultiPlan was material to Plaintiffs’ decision-making at the beginning of the treatment process. In

1 addition, given the number of steps involved in the process, it is apparent that any actions by
 2 MultiPlan could not have been the “but for *and* proximate cause” of Plaintiffs’ alleged injuries. The
 3 connection is far “too remote” and “indirect” to sustain RICO’s proximate cause and standing
 4 requirements. *See Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010).

5 For all of the preceding reasons, and for the additional reasons set forth in United’s Motion
 6 to Dismiss Plaintiffs’ FAC filed contemporaneously herewith, Plaintiffs’ RICO claims in Counts I
 7 and II of the FAC fail as a matter of law and must be dismissed pursuant to Rule 12(b)(6).

8 **IV. Plaintiffs Also Fail To State A Claim For Equitable Relief.**

9 **A. MultiPlan Is Not An ERISA Fiduciary, And Plaintiffs Do Not Plead**
 10 **Sufficient Facts To Establish A Breach Of Fiduciary Duties Or Knowing**
Participation In Such A Breach.

11 In Count VII of the FAC, Plaintiffs assert a claim for equitable relief based on ERISA
 12 Section 502(a)(3), 29 U.S.C. § 1132(a)(3), which states that a civil action may be brought:

13 by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which
 14 violates any provision of this subchapter or the terms of the plan, or (B) to obtain
 15 other appropriate equitable relief (i) to redress such violations or (ii) to enforce any
 provisions of this subchapter or the terms of the plan[.]

16 Specifically, Plaintiffs seek an injunction pursuant to § 1132(a)(3)(A) to address Defendants’
 17 purported “breaches of fiduciary duties,” including, with respect to MultiPlan, “the fiduciary duties
 18 [allegedly] assumed by acting as United’s agent,” as well as “the duty to act at all times in good
 19 faith” and “to act fairly, reasonably and promptly in dealing with [...] United’s insureds, their
 20 agents, and/or representatives, for adjusting claims, investigating claims handling, and properly and
 21 promptly returning the claims to United for payment.” [See FAC, ¶¶ 504–10]. However, these
 22 allegations cannot serve as the basis for a claim against MultiPlan under § 1132(a)(3)(A) for the
 following reasons.

23 **First**, Plaintiffs still do not plead sufficient facts to establish MultiPlan’s status as an ERISA
 24 fiduciary. It is well-settled that an action for breach of fiduciary duties under ERISA “may be
 25 brought only against persons definable as fiduciaries under ERISA. A non-fiduciary does not subject
 26 itself to liability simply by participating in a breach of trust by fiduciaries.” *Kanawi v. Bechtel Corp.*,
 27 590 F. Supp. 2d 1213, 1223 (N.D. Cal. 2008). Thus, “[t]o establish an action for equitable relief for
 28

1 breach of fiduciary duties under 29 U.S.C. § 1132(a)(3), the defendant must be an ERISA fiduciary
 2 acting in its fiduciary capacity, and must ‘violate ERISA-imposed fiduciary obligations.’” *Herzfeld*
 3 *v. Teva Pharm. USA, Inc. Omnibus Welfare Plan*, 2020 WL 1864851, at *3 (C.D. Cal. Apr. 14,
 4 2020). *See also Schuman v. Microchip Tech. Inc.*, 302 F. Supp. 3d 1101, 1114 (N.D. Cal. 2018).

5 ERISA defines fiduciaries as those who either hold positions of fiduciary responsibility or
 6 exercise their fiduciary authority over the plan:

7 [A] person is a fiduciary with respect to a plan to the extent (i) he exercises any
 8 discretionary authority or discretionary control respecting management of such plan
 9 or exercises any authority or control respecting management or disposition of its
 10 assets, (ii) he renders investment advice for a fee or other compensation, direct or
 11 indirect, with respect to any moneys or other property of such plan, or has any
 12 authority or responsibility to do so, or (iii) he has any discretionary authority or
 13 discretionary responsibility in the administration of such plan.

14 29 U.S.C. § 1002(21)(A). The Department of Labor’s guidelines for interpreting ERISA’s definition
 15 of fiduciary as set forth in § 1002(21)(A) further clarify that persons who have no power to make
 16 decisions as to plan policy interpretations, practices or procedures but who perform specific
 17 administrative functions within a framework of policies, interpretations, rules, practices and
 18 procedures made by others are not deemed fiduciaries of the plan. 29 C.F.R. § 2509.75-8, D-2. It
 19 is therefore clear that, “[w]ithout any responsibility or authority over a plan’s management and
 20 administration, one cannot be a fiduciary” under ERISA. *Brown v. Cal. Law Enf’t Ass’n*, 81 F. Supp.
 21 3d 930, 934 (N.D. Cal. 2015).

22 In the instant case, Plaintiffs do not allege or even suggest that any of the plan documents
 23 identify MultiPlan as a named fiduciary — nor can they, as MultiPlan is not an insurance company,
 24 and it does not market, sell, sponsor, insure, issue, or administer health benefit plans or programs or
 25 otherwise verify coverage or adjudicate benefits under any health benefit plans or programs.
 26 Plaintiffs also do not allege any facts to support a finding that MultiPlan or its affiliate, Viant, were
 27 exercising discretionary authority or control as to management of any plans or disposition of plan
 28 assets, or that they were rendering investment advice for any plans, or that they had discretionary
 authority or responsibility in the administration of any plans. *See* ERISA § 3(21)(A), 29 U.S.C. §
 1002(21)(A). Instead, Plaintiffs simply allege that MultiPlan “assumed” fiduciary duties “by acting

1 as United’s agent.” [See FAC, ¶ 509]. This conclusory assertion, without more, is not sufficient to
 2 subject MultiPlan to status as a fiduciary under ERISA. *See, e.g., Cty. Of Monterey v. Blue Cross of*
 3 *Cal.*, 2019 U.S. Dist. LEXIS 120209 at *15 (N.D. Cal. July 18, 2019); *Brown*, 81 F. Supp. 3d at
 4 935. Plaintiffs’ remaining allegations, which purport to explain MultiPlan’s and Viant’s
 5 methodology, as well as their roles and responsibilities with respect to the claims at issue and
 6 dealings with United, [see FAC, ¶¶ 153–411], are equally unavailing, as none of these alleged facts
 7 points to MultiPlan (or Viant) having any responsibility, authority, or control whatsoever with
 8 respect to the management, assets, or administration of any health benefit plan. Absent such
 9 allegations, Plaintiffs cannot establish that MultiPlan is an ERISA fiduciary.

10 **Second**, even if Plaintiffs could plead sufficient facts to establish MultiPlan’s status as an
 11 ERISA fiduciary, Plaintiffs must still plead that MultiPlan was acting in its fiduciary capacity and
 12 that it violated ERISA-imposed fiduciary obligations, which they have also failed to do. *See*
 13 *Herzfeld*, 2020 WL 1864851 at *3. It is well-settled that “ERISA fiduciaries breach their duties if
 14 they mislead plan participants or misrepresent the terms of administration of a plan.” *Berman v.*
 15 *Microchip Tech. Inc.*, 2018 WL 732667, at *9 (N.D. Cal. Feb. 6, 2018) (citing *King v. Blue Cross*
 16 *& Blue Shield of Ill.*, 871 F.3d 730, 744 (9th Cir. 2017)). But to prevail on a claim for breach of
 17 fiduciary duty based on misrepresentations, a plaintiff must plead and prove: “(1) the defendant’s
 18 status as an ERISA fiduciary acting as a fiduciary; (2) a misrepresentation on the part of the
 19 defendant; (3) the materiality of that misrepresentation; and (4) detrimental reliance by the plaintiff
 20 on the misrepresentation.” *In re Computer Scis. Corp. ERISA Litig.*, 635 F. Supp. 2d 1128, 1140
 21 (C.D. Cal. 2009). Additionally, as to the element of detrimental reliance, the plaintiff must show
 22 that “the misrepresentation influenced the plaintiff’s conduct, which caused prejudice.” *McBean v.*
 23 *United of Omaha Life Ins. Co.*, 2019 WL 1508456, at *9 (S.D. Cal. Apr. 5, 2019).

24 Here, Plaintiffs allege that “[p]ublicly, Viant summarizes its methodology as [...] a tool to
 25 evaluate ‘outpatient claims for opportunities to reduce the charges to levels that are usually charged
 26 by the provider and customarily charged by similar providers in the area for equivalent services’
 27 based on ‘payer-established parameters,’” but that “[i]n reality, [...] Viant’s calculations and
 28 methodology are not completely or even partially transparent: *i.e.* they are deliberately opaque,” and

1 that “MultiPlan does not disclose or even admit to the data ‘proxies’ it uses in Viant’s methodology.”
 2 [See FAC, ¶¶ 158–59, 175]. Plaintiffs further allege that “they were lied to by the Defendants who
 3 told” Plaintiffs, in the PAD letters, “that the rates being paid were consistent with an objective
 4 calculation of usual, customary, and reasonable rates;” “that it was their providers who were
 5 charging substantially more than other, similar providers in the same geographic area;” and “that
 6 the patients could owe their providers the difference.” [*Id.* ¶¶ 180, 185; *see also* ¶¶ 396–411, 424].
 7 Plaintiffs also make vague references throughout the FAC to false statements and misrepresentations
 8 on the part of MultiPlan and/or its co-Defendant, United. [*See id.* ¶¶ 264–65, 302, 332, 360, 387,
 9 410, 424, 437]. Yet, Plaintiffs do not provide any details whatsoever regarding the content of any
 10 purported misrepresentations, much less any details regarding the when, where, or how of any such
 11 misrepresentations. In fact, in many instances, it is not even clear which of the purported
 12 misrepresentations were allegedly made by MultiPlan (or Viant) and which were made by United.
 13 Plaintiffs simply assert that there were representations made, and that they were not true because
 14 United and MultiPlan ultimately did not to live up to them. Again, nothing is alleged that even
 15 comes close to approaching the requirements of Rule 9(b). Perhaps more importantly, there are
 16 absolutely no allegations anywhere in the Complaint to establish the materiality of MultiPlan’s
 17 alleged misrepresentations. Nor are there any allegations to establish that such misrepresentations
 18 were relied upon by Plaintiffs (or anyone else) or that they influenced Plaintiffs’ conduct in any
 19 way, much less that Plaintiffs were harmed as a result of any purported misrepresentations on the
 20 part of MultiPlan.

21 **Third**, Plaintiffs allege absolutely no facts to establish that MultiPlan (or Viant) knowingly
 22 participated in United’s alleged breaches of fiduciary duties — *i.e.*, that they had “actual or
 23 constructive knowledge of the circumstances that rendered the transaction unlawful.” *See Harris Tr.*
 24 *& Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 246, 251 (2000). *See also Del Castillo*
 25 *v. Cmty. Child Care Council of Santa Clara Cty., Inc.*, 2019 WL 6841222, at *6 (N.D. Cal. Dec. 16,
 26 2019); *Bush v. Liberty Life Assurance Co. of Bos.*, 130 F. Supp. 3d 1320, 1331 (N.D. Cal. 2015)
 27 (“[A] non-fiduciary may be liable for knowingly participating in the administrator’s breach of
 28 [fiduciary] duty.”). And, although Plaintiffs have diligently scrubbed from the FAC any reference

1 to their allegations in the Initial Complaint that MultiPlan (or Viant) does not receive, have access
 2 to, or knowledge of any plan terms or plan language, that highly relevant fact still persists. Therefore,
 3 artful pleading aside, Plaintiffs still “have not stated a claim for any ERISA violation, nor have they
 4 raised the reasonable inference that [D]efendants’ conduct requires enforcement of an ERISA
 5 provision or the terms of any plan,” and their claim for equitable relief under ERISA Section
 6 502(a)(3) is “subject to dismissal on this basis.” [*See* Dismissal Order, p. 12].

7 **B. Plaintiffs Do Not Plead Appropriate Equitable Relief.**

8 In addition to the foregoing, this Court dismissed Plaintiffs’ catch-all claims for equitable
 9 relief in Counts VII and VIII of the Initial Complaint on the basis that the “complaint lack[ed]
 10 allegations showing that the nature of the remedies sought [was] equitable, as opposed to legal.”
 11 [*See* Dismissal Order, pp. 8–13]. Plaintiffs purport to rectify this deficiency by converting their
 12 claim for “other appropriate equitable relief” in Count VIII to one under “common law,” and by
 13 otherwise repeating and relying upon the exact same allegations and requests for relief as set forth
 14 in their Initial Complaint.

15 However, several of Plaintiffs’ requests for relief are duplicative of relief available under
 16 other provisions of ERISA or common law theories and are subject to dismissal on this basis. In
 17 particular, Plaintiffs’ requests for declaratory relief are barred because such relief is nothing more
 18 than a request for the Court to enforce the terms of ERISA plans — relief for which ERISA provides
 19 a remedy under § 502(a)(1)(B).¹⁰ *See* 29 U.S.C. § 1132(a)(1)(B). The same is true with respect to
 20 Plaintiffs’ requests that the Court enjoin Defendants “from the conduct alleged” and order that all
 21 claims be reprocessed “using an appropriate methodology.” Likewise, Plaintiffs’ request that the
 22 Court require Defendants “to provide transparency as to the methodology applied in reprocessing
 23 claims” and approve such methodology is no more than a request for the Court to clarify Plaintiffs’
 24 rights to future benefits under the terms of ERISA plans — a remedy that is also available under §
 25

26 _____
 27 ¹⁰ Plaintiffs also seek a declaration “that United and Viant have engaged in an illegal, prohibited,
 28 RICO enterprise.” However, this request fails as a matter of law because it is duplicative of
 Plaintiffs’ RICO claim, which is insufficiently pled and subject to dismissal for the reasons
 discussed above.

1 502(a)(1)(B). *See id.* *See also Berman*, 2018 WL 732667 at *11. That Plaintiffs cannot state a viable
 2 claim under § 502(a)(1)(B) does not mean that Plaintiffs can sue for equitable relief under §
 3 502(a)(3), because the “basis for [their] claim[s]” is still legal, not equitable. *See Depot, Inc. v.*
 4 *Caring for Montanans, Inc.*, 915 F.3d 643, 660 (9th Cir. 2019).

5 Plaintiffs’ claims for injunctive relief are also subject to dismissal because Plaintiffs have
 6 not pled sufficient facts to establish that they are entitled to an injunction against MultiPlan. In this
 7 Circuit, “[f]or a plaintiff to establish that it is entitled to an injunction, it “must satisfy a four-factor
 8 test,” and show

9 (1) that it has suffered an irreparable injury; (2) that remedies available at law, such
 10 as monetary damages, are inadequate to compensate for that injury; (3) that,
 11 considering the balance of hardships between the plaintiff and defendant, a remedy
 in equity is warranted; and (4) that the public interest would not be disserved by a
 permanent injunction.

12 *See Berman*, 2018 WL 732667 at *12 (quoting *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803,
 13 827 (9th Cir. 2017)). Here, Plaintiffs do not plead the unavailability of legal remedies or that a
 14 permanent injunction would serve the public interest. Nor are there any facts establishing that a
 15 remedy in equity is warranted as against MultiPlan. Absent such facts, Plaintiffs fail to state a claim
 16 for injunctive relief against MultiPlan. Further, because the only concrete injury Plaintiffs allege
 17 involves past “underpayments” for services they received in 2018 and 2019, Plaintiffs do not even
 18 have Article III standing to seek injunctive or other prospective relief. *See City of Los Angeles v.*
 19 *Lyons*, 461 U.S. 95, 101–02 (1983) (“Abstract injury is not enough [...] and the injury or threat of
 20 injury must be both ‘real and immediate,’ not ‘conjectural’ or ‘hypothetical.’”); *Thole v. U.S. Bank*
 21 *N.A.*, —U.S.—, 2020 WL 2814294 (U.S. June 1, 2020) (holding that Article III’s requirements
 22 apply with full force to claims for statutory violations under § 502(a)(3)).

23 Finally, while Plaintiffs attempt to characterize their remaining requests for relief as
 24 equitable by labeling them as “restitution,” “surcharge,” and “disgorgement,” the relief that
 25 Plaintiffs actually seek is nothing more than money damages to compensate for the exact same
 26 alleged harm that forms the basis of Plaintiffs’ previous causes of action. [See FAC, ¶ 32 (“Plaintiffs’
 27 ERISA claims rely upon the same facts as Plaintiffs’ federal RICO claims.”); *see also* ¶¶ 504–05,
 28 511]. District courts in this Circuit have routinely granted motions to dismiss equitable relief claims

1 under similar circumstances. *See Huu Nguyen v. Nissan N. Am., Inc.*, No. 16-CV-05591-LHK, 2017
 2 WL 1330602, at *4 (N.D. Cal. Apr. 11, 2017) (citing cases).

3 Equally significant, Plaintiffs do not even attempt to satisfy the stringent pleading
 4 requirements for any of the limited categories of monetary relief that could qualify as equitable. As
 5 the U.S. Supreme Court has squarely recognized, a claim for equitable restitution requires a plaintiff
 6 to identify “money or property [...] as belonging in good conscience to the plaintiff” that “could
 7 clearly be traced to particular funds or property in the defendant’s possession.” *Great-West Life &*
 8 *Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002); *see also Sereboff v. Mid Atlantic Med.*
 9 *Servs., Inc.*, 547 U.S. 356, 323–64 (2006); *US Airways, Inc. v. McCutcheon*, 133 S.Ct. 1537, 1545
 10 (2013). “Thus, for restitution to lie in equity, the action generally must seek not to impose personal
 11 liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant’s
 12 possession.” *Great-West*, 534 U.S. at 213–14.

13 Additionally, under the “unjust enrichment” theory of surcharge, a fiduciary “who gains a
 14 benefit by breaching his or her duty must return that benefit to the beneficiary.” *Skinner v. Northrop*
 15 *Grumman Ret. Plan B*, 673 F.3d 1162, 1167 (9th Cir. 2012); *Schuman v. Microchip Tech. Inc.*, 302
 16 F. Supp. 3d 1101, 1114–20 (N.D. Cal. 2018). Where a plaintiff seeks “surcharge as a restitutionary
 17 remedy based on disgorgement,” as in the present case, the court must look “to the principles of
 18 restitution in evaluating whether” the plaintiff is entitled to such a remedy. *See Wit v. United*
 19 *Behavioral Health*, 2017 WL 3478775, at *15 (N.D. Cal. Aug. 14, 2017).

20 Even when the allegations of the FAC are viewed in the light most favorable to Plaintiffs, it
 21 is clear that, despite their characterizations, Plaintiffs’ requests for “restitutionary damages” and a
 22 “surcharge, disgorging Defendants[’] unjust enrichments” are nothing more than duplicative claims
 23 for legal relief poorly disguised as claims in equity. For starters, Plaintiffs do not identify any
 24 particular assets or funds that can reasonably be traced to MultiPlan (or Viant). Nor do they allege
 25 any facts to suggest that MultiPlan has improperly retained any monies supposedly owed to, or
 26 received any benefit directly from, Plaintiffs. Indeed, nothing in the FAC states or even suggests
 27 that MultiPlan was unjustly enriched or that MultiPlan received anything other than compensation
 28 from United pursuant to their contractual agreement. Plaintiffs therefore fail to satisfy the stringent

1 pleading requirements for any of the limited categories of monetary relief that could qualify as
 2 equitable under § 502(a)(3) or common law.

3 Accordingly, as the allegations raised in Counts VII and VIII of the FAC are virtually
 4 identical to the previously dismissed claims in the Initial Complaint, this Court should once again
 5 dismiss those claims, in their entirety and with prejudice, pursuant to Rule 12(b)(6).

6 **CONCLUSION**

7 For the foregoing reasons, Defendant MultiPlan, Inc. respectfully requests that this Court
 8 grant its Motion and dismiss all of the claims and causes of action asserted by Plaintiffs against
 9 MultiPlan in the First Amended Class Action Complaint, namely Counts I and II for violation of
 10 RICO, § 1962(c) and for conspiracy to violate RICO, § 1962(d); Count VII for equitable relief to
 11 enjoin acts and/or practices under ERISA 502(a)(3), 29 U.S.C. § 1132(a)(3); and Count VIII for
 12 other appropriate equitable relief pursuant to common law.

13 DATED: October 30, 2020

14 By: /s/ Moe Keshavarzi
 15 Moe Keshavarzi
 16 David E. Dworsky
 17 Sheppard Mullin
 18 333 South Hope Street, 43rd Floor
 19 Los Angeles, CA 90071
 20 Telephone: (213) 620-1780
 21 Fax: (213) 620-1398

18 and

19 Errol J. King, Jr.
 20 Phelps Dunbar LLP
 21 II City Plaza
 22 400 Convention Street, Suite 1100
 23 Baton Rouge, Louisiana 70802
 24 Telephone: (225) 376-0207
 25 Fax: (225) 381-9197

26 Attorneys for Defendant, MultiPlan, Inc.